

February 16, 1994

Christopher D. Hammel
President
IBM Texas Employees FCU
P.O. Box 9926
Austin, TX 78766-0926

Re : Conflict of Interest (Your January 19, 1994, Letter)

Dear Mr. Hammel:

You have asked for our opinion regarding a potential conflict of interest.

Background

IBM Employees FCU is engaged in a pre-approved lender program with AUTOMAXX, a group car purchasing service and FLEET1, a group leasing service. Both of these companies are owned by an individual, Mr. X (his name has been changed for this opinion). Ms. Y (her name has been changed for this opinion), the manager of the credit union's lending program is engaged to Mr. X. For purposes of this opinion, we will assume they are married, since the conflict provisions do not apply if they are merely engaged.

The AUTOMAXX and FLEET1 programs are encouraged by the credit union through its pre-approved loan promotion. The credit union receives no compensation from the programs, but Mr. X receives compensation from the dealer for each sale in amounts ranging from \$75 to \$150 per car. Your letter does not provide the terms of Mr. X's compensation under the leasing program.

The programs appear beneficial to the members. There is no inference that Ms. Y influenced the credit union's decision to promote Mr. X's programs. In fact, it appears the two became acquainted as a result of the credit union using the AUTOMAXX program.

Analysis

The NCUA Rules and Regulations contain a number of conflict of interest provisions. Addressing the issue of prohibited fees on loans, Section 701.21(c)(8) of the NCUA Rules and Regulations, 12 C.F.R. 701.21(c)(8) states: (8) Prohibited Fees. A Federal credit union shall not make any loan or extend any line of credit if, either directly or Mr. Christopher Hammel

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indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. ... '(I)mmediate family member' means a spouse or other family member living in the same household.

The arrangement as described is in direct violation of this regulation. Every time a loan is pre-approved/underwritten, Mr. X/immediate family member of Ms. Y/loan officer, receives income, assuming the borrower follows through and purchases or leases a car through one of the pre-approved programs. Any

compensation, either directly or indirectly, to Mr. X which is a result of the credit union's underwriting a loan is prohibited. The purpose of the provision is to ensure that the decisions a federal credit union goes through at the various stages of making a loan will not be influenced by the receipt of things of value by those at the credit union involved in such decisions. Ms. Y as a management employee connected with the lending program is either directly or indirectly involved in all of the credit union's loans. A substantial portion of the loans made will result in income to her spouse. This is a situation that could lead to the abuses the regulation is designed to prevent. Unfortunately, the prohibition is clear and absolute and the regulation does not provide for any waivers. Either, Ms. Y must resign her current position at the credit union or the credit union must cease doing business with Mr. X's companies. She could, of course, continue to work at the credit union, providing it is not a senior management or loan officer position.

I hope that we have been of assistance.

Sincerely,

Richard S. Schulman
Acting Associate General Counsel

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